

# IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Bail Appln. No. S-753 of 2025

Applicant : Badaruddin son of Dhani Bux, Nangore  
Through Mr. Mashooq Ali Ghanghro Advocate

The State : Through Mr. Mansoor Ahmed Shaikh, DPG

Date of hearing : 18.09.2025  
Date of Order : 18.09.2025

## **ORDER**

**KHALID HUSSAIN SHAHANI, J.—** Applicant Badaruddin Nangore seeks post arrest bail in a case bearing crime No.119/2025, offence under Sections 9(1), 3(C) Sindh CNS Act, 2024, registered at Police Station Halani. Prior to this, his bail plea was declined by the Court of learned Sessions Judge Naushahro Feroze vide order dated 20.08.2025.

2. The prosecution case, as set out in the FIR lodged by ASI Ghulam Abbas Rind dated 22.07.2025, asserts that during routine patrolling on the National Highway near Pir Diloo Shah, the police party intercepted a person carrying a plastic shopper on foot who, upon noticing the police, attempted to escape but was apprehended within 10 to 15 paces. Upon search, the plastic shopper contained four small and one large piece of charas weighing 1070 grams, which was sealed on the spot. The recovery and arrest memo were prepared at the scene, and PC Zahid Ali and PC Gulzar Ahmed were deputed as private mashirs due to unavailability of civilian witnesses.

3. The applicant's counsel vehemently contended that the prosecution case suffers from serious infirmities and fabricated implications against the applicant. It was emphasized that the absence of independent civilian mashirs during seizure violated the mandatory statutory provision under Section 103 Cr.P.C., thereby undermining the validity of the alleged recovery. Furthermore, no video recording was prepared at the spot during recovery, which the counsel argued is a procedural necessity under the Sindh

CNS Act, 2024, to ensure transparency and safeguard the accused's rights. The counsel referenced authoritative precedents from the Supreme Court, including the unreported order in Constitutional Petition D-729 of 2025 and reported judgments at 2024 SCMR 934 (*Zahid Sarfaraz Gill v. The State*) and 2025 SCMR 721 (*Muhammad Abid Hussain v. The State*), to canvass the principle that where procedural lapses in narcotics recoveries exist and the minimum sentence is below ten years, bail ought to be granted as a rule rather than an exception.

4. The Deputy Prosecutor General opposed the bail plea on grounds of the serious nature of the offence and the quantity of charas recovered, highlighting statutory non-bailability and arguing for deterrent punishment to the accused. However, upon scrutiny, the Court observed that the minimum prescribed sentence under the Sindh CNS Act, 2024, for the offence in question is nine years, which is below the ten-year threshold stipulated under Section 497(1) Cr.P.C. for the operation of the prohibitory clause denying bail. This distinction is critical as it establishes that the appellant is entitled to the concession of anticipation bail unless other exceptional circumstances appear. The Court further noted that the seizure took place in a public area without the presence of independent civilian mashirs, thus infringing procedural safeguards mandated by law, significantly impinging on the credibility and reliability of the prosecution's case. The absence of video recording further aggravated concerns about the authenticity of the recovery.

5. The Court extensively relied on the Supreme Court's authoritative pronouncements. In *Muhammad Abid Hussain v. The State* (2025 SCMR 721), it was held that non-observance of procedural requirements concerning narcotic drug recovery creates reasonable doubt which justifies bail even at the initial stage of trial. In *Zahid Sarfaraz Gill v. The State* (2024 SCMR 934), the apex Court emphasized that where the case rests solely on police testimony

coupled with procedural defects such as lack of video evidence, the benefit of doubt must be extended to the accused at the bail stage. These precedents collectively reinforce that procedural regularity in narcotics cases is not mere formality but a substantive right and failure to comply materially affects the prosecution's case.

6. On a combined analysis of facts, case law, and statutory framework, the Court concluded that the applicant had established a prima facie case for grant of bail. The learned trial court, vested with supervisory and judicial control, was deemed competent to impose any necessary conditions to protect the material interests of justice without causing undue prejudice to the applicant's fundamental right to liberty. Consequently, the bail application was allowed subject to furnishing a solvent surety of Rs.100,000/- (Rupees One Hundred Thousand) along with a P.R bond of the same amount to the satisfaction of the trial court. The Court clarified that the observations in this order are tentative and shall not prejudice the trial proceedings or the eventual determination of guilt or innocence.

**J U D G E**